

VI. LOCAL OMBUDSMAN PILOT PROGRAM

The Homeland Security Act of 2002 states that the Ombudsman shall have the responsibility and authority to appoint local ombudsmen and make available at least one local ombudsman per state.¹¹⁸ In preparing to exercise this responsibility and authority, the Ombudsman initiated a pilot program to design and develop a local ombudsman office.

The Local Ombudsman Pilot Program commenced in May 2005 and was completed in November 2005. It created model operations for local ombudsman offices or field offices. The program met its goals by establishing personnel and support requirements, determining liaison responsibilities and limitations, and creating quality assurance standards and program objectives.

The pilot program also developed cost models to identify personnel, facilities, and operating costs for local ombudsman offices in various locations across the country. The pilot estimated that average establishment and annual operating costs of a single, local ombudsman's office was \$556,000. It would cost an estimated \$27.8 million to place and operate one such office in each state, in addition to the cost of operating the Ombudsman's Headquarters Office in Washington, D.C.

The issue of creating local offices will be reviewed further, but there are no budget requests for establishing such offices in FY 07. Instead, the Ombudsman is developing a "Virtual Access Ombudsman Office" to make such services available via the Internet. In addition, current FY 07 budget increases will provide additional travel funds which will enable personal contact by office representatives based in Washington, D.C., visiting various locations on a circuit-ride basis. This will enable the Ombudsman to objectively identify areas to visit based on problems presented by individuals and employers in dealing with USCIS. It will provide an efficient method of providing government services by limiting infrastructure and personnel costs and using advancements in communication.

VII. CASE PROBLEMS

By statute, the Ombudsman receives and processes case problems to assist individuals and employers who experience problems with USCIS.¹¹⁹ During the reporting period, the Ombudsman committed considerable time, resources, and attention to the case problem resolution unit. This unit also helps identify systemic problems so that the case problems encountered by individuals and employers can be avoided in the future.

It should be emphasized that petitioners or applicants still will need to pursue whatever legal avenues are available upon denial of a petition or application, even if they submit a case problem with the Ombudsman. The Ombudsman's office is not an office for filing appeals of adverse decisions.

¹¹⁸ See 6 U.S.C. § 272(e)(1).

¹¹⁹ See 6 U.S.C. § 272 (b)(2).

A. Case Problem Processing

1. How to Submit A Case Problem

The Ombudsman's website, www.dhs.gov/cisombudsman, provides detailed information on how to submit a case problem:

First, please write a letter and provide the following information in the order below to assist in identifying your case.

- For the person with the case problem, please provide the person's: (1) full name; (2) address; (3) date of birth; (4) country of birth; (5) application/petition receipt number; and (6) "A" number;
- The USCIS office at which the application/petition was filed;
- The filing date of the application/petition; and
- A description of the problem.

Second, to protect your privacy, we need to verify the identity and the accuracy of the information. Please date and sign your letter and include the following statement:

"I declare (certify, verify, or state) under penalty of perjury under the laws of the United States that the foregoing is true and correct."

In addition, please include either or both of the following, if applicable:

- If you are not the person whose case about which you are inquiring, you must obtain the person's (applicant's or the petitioner's) consent. The person should include the following statement as part of the consent documentation submitted with the case problem:

"I consent to allow information about my case to be released to [name of requester]."
- If you are an attorney or accredited representative, please include a copy of your USCIS Form G-28, Notice of Entry of Appearance as Attorney or Representative.

Finally, please mail your case problem, including your dated and signed letter and copies of documents relevant to your case inquiry, to either of the following addresses:

Via regular mail:

Citizenship and Immigration Services Ombudsman
ATTN: Case Problems
U.S. Department of Homeland Security
Mail Stop 1225
Washington, D.C. 20528-1225

Via courier service:

Citizenship and Immigration Services Ombudsman
ATTN: Case Problems
U.S. Department of Homeland Security
245 Murray Lane
Washington, D.C. 20528-1225

2. Processing

When the Ombudsman receives a case problem, the information is reviewed, issues analyzed, and an appropriate course of action determined. After this internal process, and if there is a determination that the case requires a USCIS action or review, the case is electronically forwarded to the USCIS/Customer Assistance Office (CAO) for USCIS resolution within 45 calendar days. If an answer is not forthcoming within 45 calendar days, the Ombudsman's office sends a follow-up letter via email to USCIS.

3. Assistance Available

a. Scope of Assistance

Many case problems seek to reverse USCIS decisions. However, the Ombudsman cannot adjudicate immigration applications or petitions, or reverse adverse USCIS decisions. Additionally, case problems cannot serve as substitutes for the legal options available to applicants/petitioners/beneficiaries to correct problems. Finally, the Ombudsman cannot grant immigration benefits or request that USCIS grant exceptions to statutory mandates (such as the grant of a petition despite visa retrogression of the particular visa category.) The statutory authority for these actions rests solely with USCIS. Although the Ombudsman cannot provide legal advice, the office can give assistance in cases where the individual or employer is challenging a particular result and USCIS has not timely responded, such as a motion to reopen/reconsider or an appeal.

Additionally, the Ombudsman is charged with identifying systemic problems in the immigration benefits process and proposing process changes to USCIS. Thus, individuals and employers should submit comments and suggestions for improving USCIS processes and procedures.

b. Jurisdictional Issues

By statute, the Ombudsman only accepts case problems that pertain to applications and petitions for immigration benefits filed with USCIS. The Ombudsman does not have authority to assist customers in cases that are not within USCIS jurisdiction. Problems experienced with

ICE, CBP, DOS (including the National Visa Center as well as U.S. embassies and consulates), DOL, EOIR, or any other federal, state, or local entity must be resolved directly with those entities. The Ombudsman is currently expanding its relationship with these departments and agencies with the hope of ensuring better and timely responses to individuals regardless of the source of their problems.

c. Legal Advice

The Ombudsman cannot provide legal advice on immigration laws, regulations, policies, or procedures to individuals and employers. For individual cases, the Ombudsman is statutorily limited to providing assistance to individuals and employers with pending applications/petitions who are experiencing problems with USCIS.

B. Case Problem Data

The office receives letters, emails, facsimiles, and telephone calls from individuals seeking assistance from the Ombudsman. However, at this time, the Ombudsman only accepts case problems via the U.S. mail or courier service for privacy concerns. Case problems are based on the description of facts provided to the Ombudsman by individuals seeking assistance.

During the reporting period, the Ombudsman received a total of 1,263 case problems by U.S. mail or courier service, which were referred to USCIS for further action.¹²⁰ Many of these case problems involved multiple issues; there were over 2,200 issues received within these case problems. Since the start of the office in July 2003, the Ombudsman also received 5,708 email inquiries, of which 2,527 were during the current reporting period, covering a wide range of immigration issues. The Ombudsman attempts to be responsive to emails, while asking those customers with case problems to send in a written inquiry.

The most common types of complaints received from written case problems during the reporting period involved processing delays and USCIS errors. Of the 1,263 written case problems received, 1,172 complaints (over 92 percent) involved processing delays. Specifically, 198 complaints (15.7 percent of all written case problems received) involved processing delays in which FBI name checks were an issue. An additional 94 complaints (7.4 percent) addressed processing delays due to general security check issues, which in most cases likely involved FBI name checks, though the customer did not identify them as such.

Of the written case problems received this period, 577 complaints (over 45 percent) concerned USCIS errors. Of these, 320 complaints (over 25 percent) were due to USCIS' failure to respond to a customer inquiry. The Ombudsman also received many complaints from USCIS customers who received no *helpful* response from the agency as well as complaints regarding changes of address.¹²¹

¹²⁰ The Ombudsman also received over 130 written inquiries, which were outside the jurisdiction of this office.

¹²¹ See *supra* section V.28.

The four service centers, Vermont, Texas, Nebraska, and California (in the order of complaints received) had the highest number of complaints during the reporting period. This is expected as they process the highest number of cases. However, complaints from California and Nebraska were far fewer than from Texas and Vermont.

The National Benefits Center, which is a field office pre-processing center, received the highest number of complaints of all of the field offices followed by New York City, Atlanta, Washington, D.C., Chicago, Miami, and Newark. In total, the Ombudsman received complaints regarding 63 USCIS facilities during the reporting period.

C. Ombudsman's Concerns About Access to USCIS

1. Limited Access to Selected USCIS Databases for Case Problem Resolution

During the past two years, the Ombudsman has sought access to select USCIS databases to facilitate resolution of case problems. The Ombudsman recently received limited read-only permission to view certain USCIS data systems. However, the Ombudsman still does not have the capability to verify all of the facts provided by individuals seeking assistance due to continuing USCIS and DHS Headquarters information technology challenges in installing the requested systems. Once implemented, the Ombudsman will be able to validate information provided by the customer and research aspects of the case problem before referring it to USCIS for remedial action.

2. No Access to USCIS Offices to Resolve Individual Case Problems

Although personnel at service centers and field offices are most directly able to take action to resolve issues underlying the complaints received by the Ombudsman, USCIS objects to allowing the Ombudsman direct contact with agency personnel for this purpose. Consequently, the Ombudsman must go through the additional layer of the USCIS CAO to resolve cases.

This additional layer creates more problems. During the current reporting period, the Ombudsman has noted that responses to case problems forwarded to the CAO are often inadequate and unresponsive. This is partially explained by the fact that the CAO cannot access certain files electronically due to the antiquated nature of USCIS computer systems.¹²² Therefore, the CAO ordinarily will refer case problems to a USCIS service center or field office for action, which raises the questions about the usefulness of the CAO.

Additionally, not all CAO personnel are immigration officers with the experience to recognize or resolve complicated problems. Therefore, CAO responses are limited and, in many instances, of little assistance to customers. When this occurs, the customer returns to the Ombudsman for resolution. Many customers approach the Ombudsman for assistance because they cannot obtain satisfactory assistance through normal USCIS channels. These channels include the NCSC toll-free telephone number, appointments at the local field office via INFOPASS, and the Case Status Online system.

¹²² See *supra* section II.H.

Finally, during the reporting period, the Ombudsman noted that the CAO was referring case problems to the service centers and field offices using SRMT to obtain more detailed responses to difficult case problems.¹²³ CAO informed customers that answers should be forthcoming from local offices within thirty days. The CAO's utilization of SRMT actually shifts public case problems to field offices despite the fact that the CAO and call centers were established to relieve field offices from having to respond to numerous questions from the public. Consequently, the current approach seemingly has created a redundant bureaucratic process that merely delays resolution of customer inquiries.

The Ombudsman has requested attention to this situation on numerous occasions during this and previous reporting periods, but USCIS has not been as responsive as expected. The Ombudsman and USCIS have enrolled in the Department's correspondence tracking system program administered by the DHS Executive Secretary to create an organized system for referring and responding to correspondence received by DHS component offices. With this effort, the Ombudsman has started to work with the USCIS Executive Secretary who is now responsible for CAO oversight. As of this writing, the Ombudsman and the USCIS Executive Secretary have begun to develop better means of communication between the Ombudsman and CAO that include: (1) the establishment of a CAO liaison responsible for Ombudsman case problems referred to USCIS; (2) modification of workflow activities to generate aging reports to ensure timely responses by the CAO; and (3) completion of deployment of USCIS computer systems so Ombudsman personnel may fully analyze case problems and recommend action when referring case problems to the CAO.

VIII. 2006-07 REPORTING YEAR OBJECTIVES

Since 2003, the Ombudsman has identified the major systemic issues affecting individuals and employers seeking USCIS services such as: USICS funding; prolonged processing times and the related issuance of interim benefits; lack of standardization in USCIS decisions; deficient customer service; and lack of IT modernization. In the coming year, the Ombudsman will continue to focus on these and other technical areas that may require procedural, regulatory, and possible legislative changes to improve the quality of service for customers, enhance national security, and increase USCIS efficiency.

The Ombudsman also will continue to focus on the expansion of up-front processing programs, such as DORA in the Dallas District Office, which dramatically improve customer experiences, while increasing security and reducing costs. The Ombudsman looks forward to working with USCIS in the coming year on the expansion of such programs.

Another 2006-07 reporting year objective is to analyze the critical role of contractors in application processing and record handling, and the many problems that stem from processes now handled primarily by contractors. Contractor arrangements currently account for over 50 percent of the USCIS budget and are an important part of the overall USCIS effort to improve customer service, national security, and efficiency.

¹²³ See *supra* section II.I.